

# MATHEWS & FREELAND, L.L.P.

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March 11, 2014

Bridget C. Bohac, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Algonquin Water Resources of Texas, LLC TPDES Permit No. WQ0013849001,  
City of Tyler's Reply to Responses

Dear Ms. Bohac:

The following constitutes the City of Tyler's reply to the responses filed by OPIC and the Executive Director in the referenced matter.

### **Reply to OPIC's Response**

Tyler concurs with the response filed by OPIC. In particular, Tyler concurs with OPIC's conclusions regarding: (1) the "affected person" status of both Tyler and UNRMWA; (2) the issues to be referred to SOAH; and (3) the maximum expected duration of the contested case hearing (one year).

### **Reply to Executive Director's Response**

Tyler concurs with the Executive Director's conclusion that UNRMWA is an "affected person" and with all of the Executive Director's conclusions regarding issues for referral. Tyler disagrees with the Executive Director's conclusion that Tyler is not an "affected person" and with the Executive Director's conclusion that a hearing in this matter could be completed in nine months.

### **Tyler is an Affected Person**

As repeatedly stated in its previous filings in this matter, Tyler has interests related to legal rights, duties, privileges, powers, or economic interests affected by this application. Tyler has a significant investment in the quality of water in Lake Palestine. Tyler was instrumental in the construction of Lake Palestine. In 1965, Tyler entered into a contract to purchase 60 mgd from Lake Palestine. Through that contract, Tyler has invested millions of dollars in the construction and operation of the lake. Starting in 1998, Tyler spent an additional \$60 million on the construction of the Lake Palestine Water Treatment Plant. The Lake Palestine Water Treatment Plant now provides about 43% of Tyler's total drinking water supply.



The Executive Director argues that Tyler is not an "affected person" because Tyler's intake structure is located "upstream" of the location where the proposed discharge will reach Lake Palestine. The Executive Director appears to be mistaking Lake Palestine with the uncontrolled portions of the Neches River. Use of the concept of "downstream" in the context of discharges to a reservoir is inappropriate when determining the effects of the discharge on water quality in the reservoir. The discharge of pollutants to a lake will affect the water quality of the entire lake, not just the portions of the lake "downstream" from the location of the discharge. This is particularly true when no downstream releases are being made from the lake, such as during periods of drought. With regard to Lake Palestine the actual hydraulic gradient in the reservoir is towards Tyler's intake structure when no other releases are being made. During such periods, Tyler's intake structure is effectively "downstream" of the discharge.

In reality, Tyler's interests in this matter are indistinguishable from UNRMWA's interests. The Executive Director concludes that UNRMWA is an "affected person" because UNRMWA is the owner and operator of Lake Palestine and gets its public water supply from Lake Palestine. Tyler, likewise, is an owner of Lake Palestine (by contract) and gets its public water supply from Lake Palestine. If UNRMWA has standing to get a contested case hearing on this application, Tyler has standing to get a contested case hearing on this application. While the similarity in interests between Tyler and UNRMWA may be a reason to align Tyler and UNRMWA for purposes of hearing, it is not a reason to determine that Tyler is not an "affected person."

### **Conclusions**

The Commission should determine that both Tyler and UNRMWA are "affected persons." The Commission should refer the issues as set out in the responses filed by the Executive Director and OPIC. The Commission should set the maximum duration for the hearing at one year.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Joe Freeland", written over a horizontal line.

C. Joe Freeland  
Attorney on Behalf of the City of Tyler



### CERTIFICATE OF SERVICE

I certify that a true and correct copy of City of Tyler's Reply to the Responses to Requests for Hearing was served on the following by First Class Mail, electronic mail, hand delivery and/or facsimile at the addressed listed below on this 11<sup>th</sup> day of March, 2014.

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FOR THE CHIEF CLERK

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